IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.08.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MS. JUSTICE K.SUGUNA

W.A. NO. 4149 OF 2004

Central Tobacco Research
Institute, Research Station
Vedasandur, rep. by its Head .. Appellant / Petitioner in W.P.2649/97

- Vs -

The Regional Provident
Fund Commissioner
College Road
Madurai - 2. .. Respondents/ Respondent in W.P.2649/97

Writ Appeal filed against the order passed by the learned single Judge dated 20th Oct., 2004, in W.P. No.2649/97 as stated therein Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari call for the records of the respondent relating to his order RPF-C.P.I Ref.No.TN/Recy/TN/8038/97 dated 10.1.97 and quash the same.

For Appellant : Mr. Bala Murali Krishnan

For Respondents : Mr. K.Gunasekar

JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellant - Central Tobacco Research Institute, Vedasandur, (hereinafter referred to as 'Research Institute'), is a Central Government body under the control of Indian Council for Agricultural Research (ICAR). It was remitting the employers and employees share of the contribution under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, (hereinafter referred to as the 'Provident Fund Act). The share of the employees having been deducted since Nov., 1990 onwards, it was remitting both the employees and employers share since Nov., 1990. Later on, the employers share of contribution was also remitted for the period Aug., 1982 to Oct., 1990.

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2. The respondent, Regional Provident Fund Commissioner, Madurai, initially asked the appellant to deposit its contribution for the period from 1.7.1965 to July, 1982, but it was not deposited by the appellant Research Institute on the ground that it was liable to pay its share only from 1st Aug., 1982. Having served with notice of demand dated 10th Jan., 1997, u/s 8-B to 8-G of the Provident Fund Act for recovery of arrears payable by the employer for its employees under the provisions of the said Act from 1st July, 1965, the appellant unsuccessfully challenged the writ petition as dismissed by impugned order dated 20th Oct., 2004, passed by the learned single Judge in W.P. No.2644/97.

3. The only question required to be determined in this case is :-

Whether the appellant Research Institute is liable to pay employers share with effect from 1st July, 1965 or with effect from 1st Aug., 1982.

4. For determination of the said issue, we have noticed relevant facts as was set out in the writ petition and the enclosures with the typed set of papers as mentioned hereunder :-

The Employees Provident Funds and Miscellaneous Provisions Act, 1952, since it came into force specified the industries in Schedule-I in respect of whom the Act was made applicable, if the establishment is a factory in such industry in which specified number or more persons are employed. It included industries such as cement, cigarettes, iron and steel, etc. Later on, in exercise of power conferred by Section 4 of the Provident Fund Act, certain other industries were added in Schedule-I, including industries added vide GSR 768 dated 18th May, 1965, with effect from 30th June, 1965, as quoted hereunder :-

> "Stemming or re-drying of tobacco leaf industry, that is to say, any industry engaged in stemming, re-drying, handling, sorting, grading or packing of tobacco leaf."

Certain establishments other than the industries such as University, Colleges, School, Scientific Institutions, Research Institutes, etc., were not covered by the Provident Fund Act. In exercise of power conferred by clause (b) of sub-section (3) of Section 1 of the Provident Fund Act, the Central Government specified the following classes of establishments vide S.O.986 dated 19th Feb., 1982, published in the gazette dated 6th March, 1982, in which 20 or more persons were employed as establishments to which the said Act was made applicable, as quoted hereunder :-

> "In exercise of the powers conferred by clause (b) of sub-section (3) of Section 1 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) the Central Government hereby specifies the following classes of establishment in each of which twenty or more persons are employed as establishments to which the said Act shall apply, namely :-
>
> (i) any University ;

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(ii) any college, whether or not affiliated to a University ;
(iii) any school, whether or not recognised or aided by the Central or a State Government ;
(iv) any scientific institution ;
(v) any institution in which research in respect of any matter is carried on; and
(vi) any other institution in which the peuvny of aspartine knowledge or training is systematically carried on."

5. Having noticed this, the parent organisation of the appellant Research Institute, requested for grant of exemption of its units from the operations of the provisions of the Provident Fund Act. The Government of India from its Ministry of Labour and Rehabilitation Department, New Delhi, vide letter dated 24/25.1.1983, informed that the general question of grant of exemption of autonomous bodies, like ICAR, was under consideration and pending final decision in the matter, the provident fund authorities have been advised to stay recovery action against units of ICAR. Later on, the employees provident fund scheme was implemented and from letter dated 17th Dec., 1991, it appears that their share was deducted with effect from 1st Nov., 1990. Having come to know that the scheme was to be given effect from 1st Aug., 1982, in view of S.O.986 dated 19th Feb., 1982, gazetted on 6th March, 1982, request was made to exempt them from payment of the employees share for the period from 1st Aug., 1982 to 30th Oct., 1990. The appellant-employer, while paid contribution of both employees and employers share from Nov., 1990, later on, deposited its share for the period from 1st Aug., 1982 to Oct. 1990. The office of the Employees Provident fund Organisation, Regional Office, Madurai, by letter dated 30th April, 1996, informed the appellant that the Government having not exempted its establishment from total operation of the Provident Fund Act, it was advised to implement the provisions for the arrear period from July, 1965. The appellant-Research Institute, by its letter dated 20th May, 1996, informed the Provident Fund Commissioner, New Delhi, that the scheme has been implemented with effect from 1st Aug., 1982, but the Regional Provident Fund Commissioner, Madurai, is asking to implement it from July, 1965, which is incorrect. It was informed that the legislation covering the research institute has come into force by notification dated 19th Feb., 1982, gazetted on 6th March, 1982, with effect from 1st Aug., 1982. The correspondence continued, as appears from the letter of Regional Commissioner, Provident Fund Department, dated 16th Oct., 1996, reply as submitted by appellant-research institute on 12th Nov., 1996, followed by letters dated 21st Nov., 1996, 13th Dec., 1996, etc. Final demand notice u/s 8-B to 8-G having issued on 10th Jan., 1997, the writ petition was preferred.

6. Learned single Judge mainly relied on GSR 768 dated 18th May, 1965, which came into effect from 30th June, 1965 and a coverage memo forwarded to the appellant on 17th Feb., 1975, and held that stemming or re-drying tobacco leaf industry, having covered vide GSR 768 dated 18th May, 1965, with effect from 30th June, 1965, the appellant

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was liable to remit the provident fund under the scheme with effect from 1st July, 1965, and dismissed the writ petition.

7. Similar stand has been taken by the learned counsel appearing on behalf of the Regional Provident Fund Commissioner that the tobacco leaf industry being covered vide GSR 768 dated 18th May, 1965, with effect from 30th June, 1965, the appellant is liable to pay its share with effect from 1st July, 1965.

On the other hand, learned counsel appearing on behalf of the appellant, while referred to the averments made in the writ petition and different letters issued from time to time, submitted that the appellant being a research institute, it is covered by S.O. 968 dated 19th Feb., 1982, gazetted on 6th March, 1982 and, thus, the appellant is liable to pay provident fund with effect from 1st Aug., 1982.

8. The Employees Provident Funds and Miscellaneous Provisions Act, 1952, was enacted to provide for the institution of provident fund, pension fund and deposit linked insurance fund for the employees "in factories" and "other establishments". It was intended for the whole of India except the State of Jammu and Kashmir and made applicable to the establishments as per sub-section (3) to Section 1, as quoted hereunder :-

> "1. Short title, extent and application. - * * *
>
> (3) subject to the provisions contained in section 16, it applies -
>
> (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed; and
>
> (b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf :
>
> Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]"

Section 2 (i) defines 'industry' means any industry specified in Schedule I, and includes other industry added to the Schedule by notification u/s 4. Power to add other industries under Schedule-I is vested on Central Government u/s 4, who by notification in the official gazette may add to Schedule-I any other industry in respect of employees, whereof provident fund scheme were to be framed under the Act. The industries so added shall deem to be an industry specified under Schedule-I for the purpose of the said Act.

From clause (a) sub-section (3) to Section 1, it will be evident that the said Act was made applicable to every establishment, which is a factory engaged in any industry specified under Schedule-I and in which 20 or more persons are employed. That means, an establishment under the said clause (a) of sub-section (3)

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to Section 1 is liable to remit thereof, the provident fund of employee and employer, if it fulfils the following conditions :-

a) the establishment is a factory ;

b) it is engaged in any industry specified under Schedule-I ; and

c) in which 20 or more persons are employed.

On the other hand under clause (b) of sub-section (3) to Section 1, the said Act could be made applicable to "any other establishment" employing 20 or more persons or class of such establishment, which the Central government, may, by notification in the official gazette specify in that behalf. That means, even though the establishment, is not covered by clause (a) of sub-section (3) to Section 1, the said Act could be made applicable by the Central Government if such establishment employs 20 or more persons. For such purpose, a separate notification has to be issued under clause (b) of sub-section (3) to Section 1.

9. From the aforesaid provision it will be evident that Schedule I attached with the Act includes the industries as mentioned therein and defined u/s 2; certain other industries were added therein in exercise of power conferred by Section 4. Schedule-I is applicable to such establishments, who are covered by clause (a) of sub-section (3) to Section 1, that means the establishments, (i) which is a factory; (ii) engaged in any industry specified in Schedule-I; and (iii) in which 20 or more persons are employed.

The industries added vide GSR 768 dated 18th May, 1965, with effect from 30th June, 1965, are thus applicable only to those establishments which fall within the category of clause (a) of sub-section (3) of Section 1.

On the other hand, "other establishment" where 20 or more persons are employed, and do not fall within the category of clause (a) of sub-section (3) to Section 1, in their case, other notifications are applicable, including S.O.968 dated 19th Feb., 1982, gazetted on 6th March, 1982, which have been issued in exercise of power conferred by clause (b) of sub-section (3) to Section 1.

10. Now, the question to be determined is whether the appellant's establishment is covered by clause (a) of sub-section (3) to Section 1 or clause (b) of sub-section (3) to Section 1.

From letter Ref. No.AP/17680/AG-III-4/93/75 dated 13th May, 1993, issued by the Regional Provident Fund Commissioner, Vishakapatnam, it appears that the appellant's research institute is situated at Rajamundhry in the State of Andhra Pradesh, said institute was informed that the establishment is covered under the Provident Fund Act with effect from 1st Aug., 1982. In their letter, the appellant's research institute at Rajamundry, which is within the State of Andhra Pradesh has informed the Provident Fund Commissioner that it has implemented the provident fund scheme with effect from 1st Aug., 1982. By another letter dated 12th Nov., 1996, the appellant's research institute at Rajamundry, informed its research station at Vedasandur that it being an unit of ICAR, New Delhi and as it is a non-profit motivated institute and is a research institute, S.O. 986 dated 19th Feb., 1982 issued by the

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Government of India will be applicable. By their letter dated 13th Dec., 1996, the Regional Provident Fund Commissioner, Madurai, was also informed that the research institute at Vedasandur, Madurai is a research station of said Research Institute.

11. In the writ petition, the appellant specifically pleaded that its other tobacco research institutes, which are in five other States, provident fund authorities have applied this scheme with effect from 1st Aug., 1982, being a research institute. The name of Central Tobacco Research Institutes at the following places have been shown therein :-

i) Guntur, Andhra Pradesh ;
ii) Hunsur, Karnataka ;
iii) Dinhatta, West Bengal ;
iv) Pusa, Bihar ;
v) Kandupur, Andhra Pradesh ; and
vi) CTRI, Vedasandur, Tamil Nadu (appellant's institute).

It was specifically pleaded that the appellant institute is engaged in conducting research in all fields concerning tobacco evolving new varieties of chewing, cigar, cherost tobacco types with enhanced yield poterted, improved quality, resistance to biotic and abiotic stress factors, etc., and development of appropriate agro-techniques for the same. For this purpose, the appellant-institute has been given 51 acres of land at Vedasandur, where the research activities are carried on since 1948. There is absolutely no profit motive for the appellant-institute.

12. Though a counter affidavit was filed on behalf of the Regional Provident Fund Commissioner, Madurai, it referred to different circulars and different provisions of law and circulars and took simple plea that the appellant establishment was covered with effect from 1st July, 1965, under Schedule-I head "Stemming or Re-Drying of Tobacco Leaf" in code No.TN/8038.

No discussion has been made either by the Regional Provident Fund Commissioner, Madurai, or by the learned single Judge on the issue whether the appellant establishment is a 'factory' engaged in any industry specified in Schedule-I. Stemming or Re-Drying of tobacco leaf industry is different than a research institute, which is engaged in conducting research in fields concerning tobacco, evolving new varieties of chewing, cigar, chroast tobacco types with enhanced yield poterted or having improved quality, resistance to biotic and abiotic stress factors, etc., and development of proper agro-techniques, etc. There is nothing on record to suggest that the appellant's establishment is a factory engaged in stemming or re-drying or handling or assorting or grading or packing of tobacco leaf. Without such discussion, the Regional Provident Fund Commissioner, Madurai, brought the establishment of the appellant within the purview of clause (a) of sub-section (3) to Section 1, which cannot be accepted in absence of specific finding.

13. It has not been disputed that the appellant is a research institute making research on enhancement of yield poterted to improve quality and researching on other issue, such as resistance to bio-tech and a-biotech stress factors in the field concerning

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tobacco. That means, it is not preparing or manufacturing or doing any work in its factory establishment for any industrial purpose nor it has any factory. It do not fulfil all the three ingredients to fall within clause (a) of sub-section (3) to Section 1. Therefore, it cannot be held that the appellant's research institute is covered by GSR 768 dated 18th May, 1965, with effect from 30th June, 1965. On the other hand, as the appellant is doing research, which has not been disputed. In absence of any other evidence to the contrary, it can be safely stated that the appellant research institute falls within the category of "other establishment" covered under clause (b) of sub-section (3) to Section 1 of the Provident Fund Act and thus it is guided by S.O. 986 dated 19th Feb., 1982, which has come into force in the year 1982.

14. In view of our specific finding aforesaid, neither the impugned demand notice dated 10th Jan., 1997, could be upheld nor the order dated 20th Oct., 2004, passed by the learned single Judge in W.P. No.2649/97. They are accordingly set aside. The writ appeal is allowed. But there shall be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

To

The Regional Provident
Fund Commissioner
College Road
Madurai - 2.

1 cc to Mr.N. Bala Murali Krishnan, Advocate, Sr. 54025
1 cc to Mr.K. Gunasekar, Advocate, Sr. 53809

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